

Department of the Army  
Omaha District, Corps of Engineers  
6014 U.S. Post Office and Courthouse  
Omaha, Nebraska 68102

DM 405-2-1

MROOP/MRORE

Memorandum  
No. 405-2-1

1 October 1980

Real Estate  
ENCROACHMENTS

1. Purpose. Prescribes policy and procedures for surveillance and safeguarding of Government-owned fee and easement lands to prevent new encroachments and prescribe the actions necessary to remove or resolve existing encroachments.

2. Applicability. This memorandum shall be applicable to all water resource development projects administered by the Omaha District Corps of Engineers in behalf of the Chief of Engineers and to those lands on which an easement has been acquired by the Corps of Engineers.

3. References.

- a. MRD Encroachment Action "Handbook," June 1978
- b. Title 36 (36 CFR § 327, 1979)
- c. Section 10 (33 USC § 403)
- d. Section 404 (33 USC § 1344)
- e. AR 405-70
- f. AR 405-80
- g. EP 405-1-2
- h. ER 405-1-750
- i. ER 1130-2-405
- j. ER's 405-1-800, 830, 840, 860, and 875
- k. DM 1130-2-7
- l. ER 1130-2-406
- m. ER 405-2-835

4. Definitions.

a. Encroachment, as used in this memorandum, is the term applied to all unauthorized uses whether they are trespasses or any other violation stemming from illegal or unauthorized entry on and/or use of Government-owned fee or easement land where use or implied possession by individual(s) or other entities violates the rights held by Government in the land.

(1) Minor Encroachment. This refers to violations which do not create visual damage or destruction and removal would not result in damages to the Government. Something that can usually be resolved at the local level with one or two contacts.

(2) Major Encroachment refers to a higher degree of the violation of the rights held by the Government. It also refers to the complexity and extent of land modification, damages or destruction, possession and occupation of Government-owned lands. Usually will require formal contact and District coordination.

b. District or District Elements refers to any subunit of the Omaha District, Corps of Engineers within the entire District area.

5. Policy. The general policy is to protect the resource base of the project and the integrity of project lands by preventing new encroachments and by resolving existing ones by fair and consistent use of all available remedies. Remedial actions shall be legal and reasonable, yet will be directed toward alleviating encroachment situations which affect the project environment or interfere with the enjoyment, health, safety, or welfare of project visitors. Since encroachment prevention is more desirable than remedial measures, every effort must be made to prevent encroachments from developing and the following actions will be accomplished as soon as possible:

a. Insure that all project boundaries are surveyed and monumented to the extent necessary to clearly delineate those boundary lines. Survey and monumenting of operating Lake Project area boundaries must be given high priority, especially in those areas where adjacent landowners are developing home and/or recreation sites; or are engaged in agricultural row-crop or stock feeding endeavors which are difficult to control without fencing.

b. Identify and report those areas where boundary markers cannot be located or have been destroyed. Requests for re-establishment of boundary markers should be made to Engineering Division, Surveys and Mapping Section immediately upon discovery of the removal, destruction, or damage to boundary markers.

c. Intensify training on the rules, regulations, and policies concerning encroachments to appropriate personnel directly involved with project management activities both in the Omaha District office and in the field offices.

d. Each project shall establish a plan and program to notify adjacent landowners and make them aware of their responsibilities in regard to fee title and flowage easement lands. The plan or program should emphasize the flowage easement projects held by the Government in each project area.

e. Construction Policy in Flowage Easements. Where easements prohibit human habitation no construction for human habitation will be allowed. The general rule is that use of fill in flowage easements violates Government rights, however, in unique situations proposals for filling in flowage easements may be submitted to the District Engineer for review. All other proposed appurtenances or structures within a flowage easement should be submitted to the District Engineer for review and approval prior to construction. Plans for improvements or appurtenances by third parties shall be submitted to the District Engineer for review. If approved, Real Estate Division will grant formal consent before construction begins.

6. Encroachment Identification.

a. Project Personnel. All lake project personnel shall familiarize themselves with project boundaries, flowage easements, elevations, contour lines, in order to prevent the various types of encroachments which can occur within each project. Both Real Estate Field Office and Project Office personnel shall make a concerted effort to identify encroachments on each project. These efforts shall be fully coordinated.

b. District Personnel. All Real Estate personnel who visit project lands in the course of compliance and utilization inspections, or for other purposes, shall actively search for encroachments during such visits or inspections. Real Estate personnel shall coordinate their trip with the Lake Project Manager and take along sufficient reference data to identify the Government property lines of the lands scheduled for inspection. When possible, a project employee shall accompany the Real Estate personnel on such inspections. Any encroachment discovered will be discussed with the Lake Project Manager to determine if that individual is aware of it and what action has been taken or is proposed. All other District personnel who in the course of their normal duties, visit, inspect, or are regularly employed on civil works projects shall also be responsible for identifying and reporting encroachments to Lake Project personnel.

7. Encroachment Reporting.

a. All encroachments, immediately upon discovery, will be reported to the Lake Project Manager. Most encroachments are citable violations under Title 36, however, some violations are also subject to prosecution under other statutes. Such offenses are a matter of law enforcement concern and should be reported, through the appropriate offices, to the District Office of Counsel and/or Federal law enforcement officials. In cases of major encroachments, the Lake Project Manager shall coordinate with the Real Estate Field Office at least informally, prior to taking any action to resolve the encroachment. Other than minor encroachments which are resolved on-site, the course of action selected by the Lake Project Manager to resolve an encroachment must be coordinated with the appropriate element of the District Office so as not to eliminate alternatives or assume the authorities of other staff elements. Major encroachments shall be reported on MRD Form 0877, Encroachment Detection and Action Record, and forwarded to the Chief, Operations Division, or to Chief of Real Estate Division with copies furnished to other District elements as necessary. Minor encroachments should be recorded on MRD Form 0877 and retained in Project Office files. The flow chart (Appendix A) should be utilized as a guide for reporting, resolving and staffing procedures.

b. The Lake Project office shall keep a record of all steps taken to resolve an encroachment problem including records of telephone calls, letter correspondence and personal conversations with the violator, and all communications with other District elements for use with the Recreation Resource Management System (RRMS) annual report, the annual Real Estate Utilization Survey, and for future reference as necessary.

c. When an encroachment is discovered, it should be analyzed in accordance with the following criteria to determine what course of action will be taken in order to resolve the encroachment.

(1) Is it a major or minor encroachment?

(2) Which District element will be involved to the greatest extent in resolving the encroachment?

(3) Does the encroachment involve a violation of either Section 10 or 404 permit programs or a Real Estate outgrant?

(4) Is there a possibility the encroachment may be in conflict with environmental or cultural resources concerns?

(5) Could the encroachment, if continued, develop into more serious or dangerous problems?

## 8. Encroachment Resolution.

a. Appendix A, the Encroachment Resolution Flow Chart, outlines the District Policy for staffing encroachment actions in order to resolve the problem or violation.

(1) Emphasis is placed on resolving encroachments in the field and notifying both the Project Office and Real Estate Field Office of any actions taken.

(2) If the encroachment cannot be resolved in the field a coordinated recommendation shall be forwarded to Real Estate or Operations Division (with a copy furnished to the other office), for action. In accordance with the Encroachment Action Handbook, an Action and Detection Record (MRD Form 0877) shall be completed and included with the action being forwarded. It is important that all pertinent information, sketches, maps and photos be included so the office acting on the encroachment will be fully informed.

(3) The District will proceed with the encroachment resolution and keep the field elements fully informed of what actions are being taken.

b. It is important to remember that each action is different and may require different solutions, but the solution should be consistent with District policy. The flow chart is only a guide for staffing and resolving an encroachment.

c. In extreme situations the Project office may determine that a Temporary Restraining Order (TRO) from a court is necessary. The Real Estate Division, Assistant District Counsel should be contacted immediately. This should occur when a cease and desist letter or citation does not work and the situation is critical. This only applies in situations when an activity, if continued, will result in irreparable damage to the Government if the TRO is not issued.

## 9. Summary.

a. Encroachment prevention is the goal of District policy. Encroachment prevention requires full knowledge of the project and its boundary. It is Corps policy to identify and resolve all existing encroachments by 1985 and prevent new encroachments by intensified land use management.

b. It is important to have proper reporting and record keeping of each encroachment because it helps resolve the problem. An encroachment when discovered should be analyzed to determine the steps necessary for its

DM 405-2-1

1 Oct 80

resolution. Action to solve the problem should begin immediately. The steps necessary to solve the problem may become quite involved, so good notes are important. Remember, minor encroachments may develop into major encroachments.



c. The Encroachment Resolution Flow Chart sets out the suggested procedures for staffing encroachments. The flow chart also demonstrates the various solutions and directions that are involved in resolving an encroachment. The flow chart should be followed as much as possible.

10. Reports. The reporting requirements prescribed in this memorandum are exempted from Management Information Control by paragraph 7-2t, AR 335-15.

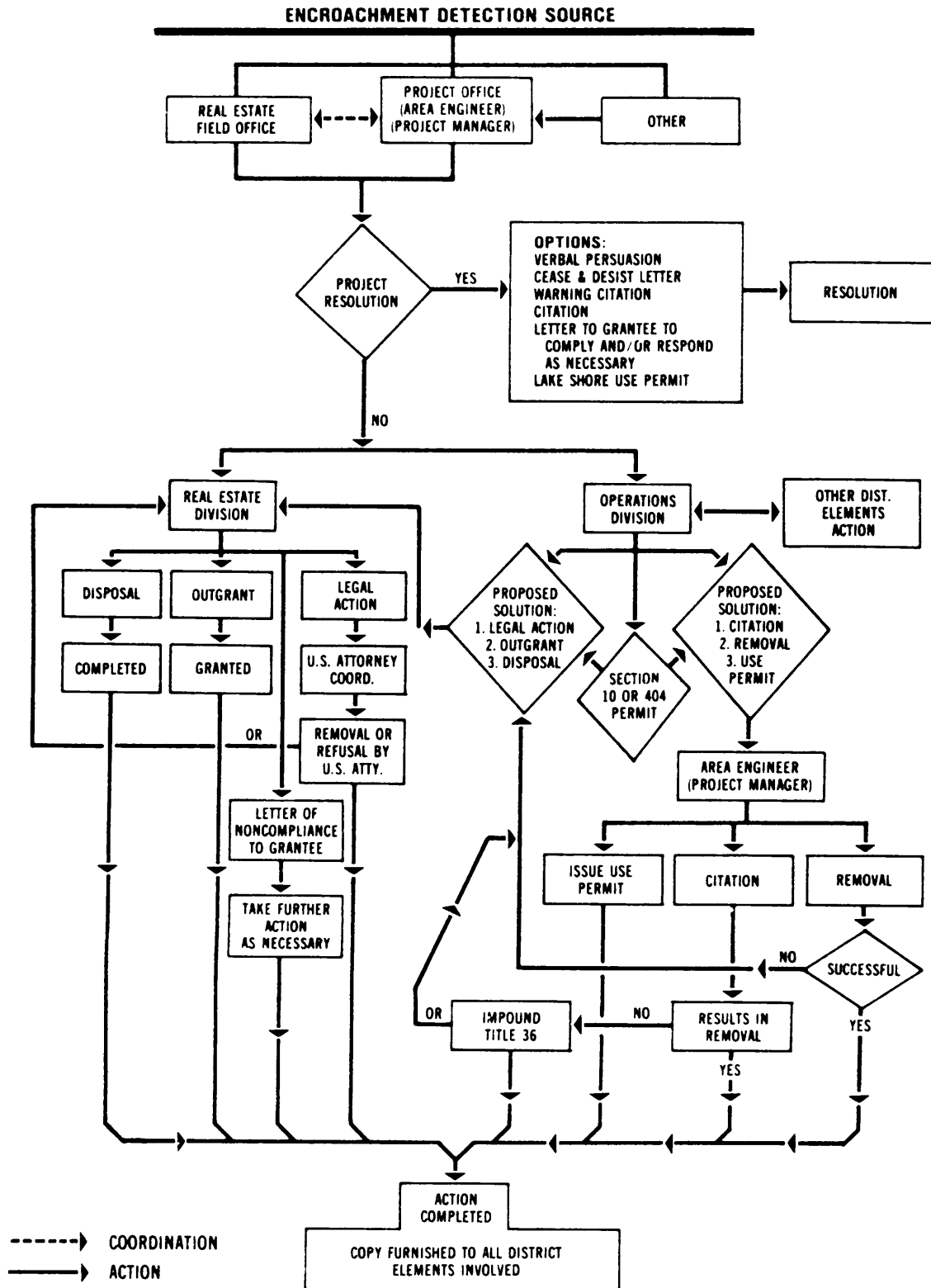
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APP A - Encroachment  
Resolution Flow Chart

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# APPENDIX A ENCROACHMENT RESOLUTION FLOW CHART



**NOTE:** Normal District staffing procedures for any actions to resolve the encroachment will not be affected by this flow chart. Copies shall be furnished to appropriate district elements whenever appropriate.